
HOUSE BILL No. 1163

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-28-3.

Synopsis: Subcontractor liens. Provides that a contractor must pay all subcontractors within five business days after receiving payment from a homeowner or builder. Provides that a builder must disclose to a purchaser all subcontractors used in new home construction. Requires a contractor to provide notice to all subcontractors when the contractor has been paid by a homeowner or builder. Prohibits a subcontractor from filing a lien against a property if the primary contractor has received full payment for the contract. Allows a subcontractor to file an action against a prime contractor to recover any unpaid claims due under a contract between the prime contractor and the subcontractor.

Effective: July 1, 2007.

Orentlicher

January 11, 2007, read first time and referred to Committee on Small Business and Economic Development.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1163

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 32-28-3-1, AS AMENDED BY P.L.1-2006,
2 SECTION 501, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) **Except as provided in**
4 **section 9.3 of this chapter**, a contractor, a subcontractor, a mechanic,
5 a lessor leasing construction and other equipment and tools, whether or
6 not an operator is also provided by the lessor, a journeyman, a laborer,
7 or any other person performing labor or furnishing materials or
8 machinery, including the leasing of equipment or tools, for:
9 (1) the erection, alteration, repair, or removal of:
10 (A) a house, mill, manufactory, or other building; or
11 (B) a bridge, reservoir, system of waterworks, or other
12 structure;
13 (2) the construction, alteration, repair, or removal of a walk or
14 sidewalk located on the land or bordering the land, a stile, a well,
15 a drain, a drainage ditch, a sewer, or a cistern; or
16 (3) any other earth moving operation;
17 may have a lien as set forth in this section.

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(b) A person described in subsection (a) may have a lien separately or jointly: ~~upon the:~~

(1) **upon the** house, mill, manufactory, or other building, bridge, reservoir, system of waterworks, or other structure, sidewalk, walk, stile, well, drain, drainage ditch, sewer, cistern, or earth:

(A) that the person erected, altered, repaired, moved, or removed; or

(B) for which the person furnished materials or machinery of any description; and

(2) on the interest of the owner of the lot or parcel of land:

(A) on which the structure or improvement stands; or

(B) with which the structure or improvement is connected;

to the extent of the value of any labor done or the material furnished, or both, including any use of the leased equipment and tools.

(c) All claims for wages of mechanics and laborers employed in or about a shop, mill, wareroom, storeroom, manufactory or structure, bridge, reservoir, system of waterworks or other structure, sidewalk, walk, stile, well, drain, drainage ditch, cistern, or any other earth moving operation shall be a lien on all the:

(1) machinery;

(2) tools;

(3) stock;

(4) material; or

(5) finished or unfinished work;

located in or about the shop, mill, wareroom, storeroom, manufactory or other building, bridge, reservoir, system of waterworks or other structure, sidewalk, walk, stile, well, drain, drainage ditch, sewer, cistern, or earth used in a business.

(d) If the person, firm, limited liability company, or corporation described in subsection (a) or (c) is in failing circumstances, the claims described in this section shall be preferred debts whether a claim or notice of lien has been filed.

(e) Subject to subsection (f), a contract:

(1) for the construction, alteration, or repair of a Class 2 structure (as defined in IC 22-12-1-5);

(2) for the construction, alteration, or repair of an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5);

(3) for the construction, alteration, or repair of property that is:

(A) owned, operated, managed, or controlled by a:

(i) public utility (as defined in IC 8-1-2-1);

(ii) municipally owned utility (as defined in IC 8-1-2-1);

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- 1 (iii) joint agency (as defined in IC 8-1-2.2-2);
 2 (iv) rural electric membership corporation formed under
 3 IC 8-1-13-4;
 4 (v) rural telephone cooperative corporation formed under
 5 IC 8-1-17; or
 6 (vi) not-for-profit utility (as defined in IC 8-1-2-125);
 7 regulated under IC 8; and
 8 (B) intended to be used and useful for the production,
 9 transmission, delivery, or furnishing of heat, light, water,
 10 telecommunications services, or power to the public; or
 11 (4) to prepare property for Class 2 residential construction;
 12 may include a provision or stipulation in the contract of the owner and
 13 principal contractor that a lien may not attach to the real estate,
 14 building, structure, or any other improvement of the owner.
 15 (f) A contract containing a provision or stipulation described in
 16 subsection (e) must meet the requirements of this subsection to be valid
 17 against subcontractors, mechanics, journeymen, laborers, or persons
 18 performing labor upon or furnishing materials or machinery for the
 19 property or improvement of the owner. The contract must:
 20 (1) be in writing;
 21 (2) contain specific reference by legal description of the real
 22 estate to be improved;
 23 (3) be acknowledged as provided in the case of deeds; and
 24 (4) be filed and recorded in the recorder's office of the county in
 25 which the real estate, building, structure, or other improvement is
 26 situated not more than five (5) days after the date of execution of
 27 the contract.
 28 A contract containing a provision or stipulation described in subsection
 29 (e) does not affect a lien for labor, material, or machinery supplied
 30 before the filing of the contract with the recorder.
 31 (g) Upon the filing of a contract under subsection (f), the recorder
 32 shall:
 33 (1) record the contract at length in the order of the time it was
 34 received in books provided by the recorder for that purpose;
 35 (2) index the contract in the name of the:
 36 (A) contractor; and
 37 (B) owner;
 38 in books kept for that purpose; and
 39 (3) collect a fee for recording the contract as is provided for the
 40 recording of deeds and mortgages.
 41 (h) A person, firm, partnership, limited liability company, or
 42 corporation that sells or furnishes on credit any material, labor, or

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machinery for the alteration or repair of an owner occupied single or double family dwelling or the appurtenances or additions to the dwelling to:

- (1) a contractor, subcontractor, mechanic; or
- (2) anyone other than the occupying owner or the owner's legal representative;

must furnish to the occupying owner of the parcel of land where the material, labor, or machinery is delivered a written notice of the delivery or work and of the existence of lien rights not later than thirty (30) days after the date of first delivery or labor performed. The furnishing of the notice is a condition precedent to the right of acquiring a lien upon the lot or parcel of land or the improvement on the lot or parcel of land.

(i) A person, firm, partnership, limited liability company, or corporation that sells or furnishes on credit material, labor, or machinery for the original construction of a single or double family dwelling for the intended occupancy of the owner upon whose real estate the construction takes place to a contractor, subcontractor, mechanic, or anyone other than the owner or the owner's legal representatives must:

- (1) furnish the owner of the real estate:
 - (A) as named in the latest entry in the transfer books described in IC 6-1.1-5-4 of the county auditor; or
 - (B) if IC 6-1.1-5-9 applies, as named in the transfer books of the township assessor;
 with a written notice of the delivery or labor and the existence of lien rights not later than sixty (60) days after the date of the first delivery or labor performed; and
- (2) file a copy of the written notice in the recorder's office of the county not later than sixty (60) days after the date of the first delivery or labor performed.

(j) The furnishing and filing of the notice is a condition precedent to the right of acquiring a lien upon the real estate or upon the improvement constructed on the real estate.

(k) A copy of the notice of lien rights under subsection (h) or (i) must list:

- (1) the name and address of the:**
 - (A) property owner;**
 - (B) subcontractor; and**
 - (C) contractor; and**
- (2) a description of the:**
 - (A) material;**

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1 (B) labor; or

2 (C) machinery;

3 used for the alteration or repair of the owner's property.

4 (j) (I) A lien for material or labor in original construction does not
5 attach to real estate purchased by an innocent purchaser for value
6 without notice of a single or double family dwelling for occupancy by
7 the purchaser unless notice of intention to hold the lien is recorded
8 under section 3 of this chapter before recording the deed by which the
9 purchaser takes title.

10 SECTION 2. IC 32-28-3-9 IS AMENDED TO READ AS
11 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. (a) **Except as**
12 **provided in section 9.3 of this chapter**, this section applies to a:

13 (1) subcontractor;

14 (2) lessor leasing construction and other equipment and tools,
15 regardless of whether an operator is also provided by the lessor;

16 (3) journeyman; or

17 (4) laborer;

18 employed or leasing any equipment or tools used by the lessee in
19 erecting, altering, repairing, or removing any house, mill, manufactory
20 or other building, or bridge, reservoir, system of waterworks, or other
21 structure or earth moving, or in furnishing any material or machinery
22 for these activities.

23 (b) Except as provided in section 12 of this chapter, in order to
24 acquire and hold a lien, a person described in subsection (a) must give
25 to the property owner, or if the property owner is absent, to the property
26 owner's agent, written notice particularly setting forth the amount of the
27 person's claim and services rendered for which:

28 (1) the person's employer or lessee is indebted to the person; and

29 (2) the person holds the property owner responsible.

30 (c) Subject to subsections (d) and (e), the property owner is liable
31 for the person's claim.

32 (d) The property owner is liable to a person described in subsection
33 (a) for not more than the amount that is due and may later become due
34 from the owner to the employer or lessee.

35 (e) A person described in subsection (a) may recover the amount of
36 the person's claim if, after the amounts of other claims that have
37 priority are subtracted from the amount due from the property owner
38 to the employer or lessee, the remainder of the amount due from the
39 property owner to the employer or lessee is sufficient to pay the amount
40 of the person's claim.

41 (f) This section applies to a person described in subsection (a) who
42 gives written notice, to the property owner or, if the property owner is

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absent, to the owner's agent, before labor is performed or materials or machinery is furnished. The notice must particularly set forth the amount of:

(1) labor the person has contracted to perform; or

(2) materials or machinery the person has contracted to furnish; for the employer or lessee in erecting, altering, repairing, or removing any of the buildings or other structures described in subsection (a). A person described in subsection (a) has the same rights and remedies against the property owner for the amount of the labor performed by the person or materials or machinery furnished by the person after the notice is given, as are provided in this chapter for persons who serve notice after performing the labor or furnishing the materials or machinery.

(g) If an action is brought against a property owner under this section, all subcontractors, equipment lessors leasing equipment, journeymen, and laborers who have:

(1) performed labor or furnished materials or machinery; and

(2) given notice under this section;

may become parties to the action. If, upon final judgment against the property owner the amount recovered and collected is not sufficient to pay the claimants in full, the amount recovered and collected shall be divided among the claimants pro rata.

SECTION 3. IC 32-28-3-9.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 9.3. (a) This section applies to the:**

(1) construction, alteration, or repair of a Class 2 structure (as defined in IC 22-12-1-5);

(2) construction, alteration, or repair of an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5); and

(3) preparation of property for Class 2 residential construction;

that begins after June 30, 2007.

(b) As used in this section, "subcontractor" means an individual, a partnership, a firm, a limited liability company, a corporation, or another person to whom a contractor sublets part of a contract.

(c) A contractor shall provide notice to a subcontractor that the contractor has received the full payment for the contract under which the subcontractor was employed not later than one (1) business day after receiving the payment.

(d) A contractor shall pay a subcontractor the amount due to

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the subcontractor not later than five (5) business days after giving the subcontractor the notice required under subsection (c).

(e) If the prime contractor fails to pay the subcontractor as described in subsection (d), a subcontractor:

(1) may file an action against the prime contractor to recover any; and

(2) may not file a lien against a property because of; unpaid claims due under a contract between the prime contractor and the subcontractor.

(f) A subcontractor may file an action against the prime contractor to recover any unpaid claims due under a contract between the prime contractor and the subcontractor if the prime contractor fails to pay the subcontractor as described in subsection (d).

(g) An action under subsection (e)(1) may be filed in a circuit or superior court with jurisdiction in the county where the property for which the subcontractor provided work or materials is located.

SECTION 4. IC 32-28-3-9.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9.5. (a) As used in this section, "builder" means a person who constructs new homes for sale, including new homes on land owned by home buyers.

(b) As used in this section, "closing" means a transfer of an interest described in a new home by a deed, an installment sales contract, or a lease.

(c) As used in this section, "lender" refers to:

(1) an individual;

(2) a supervised financial organization (as defined in IC 24-4.5-1-301);

(3) an insurance company or a pension fund; or

(4) any other entity that has the authority to make loans.

(d) As used in this section, "subcontractor" means an individual, a partnership, a firm, a limited liability company, a corporation, or another person to whom a contractor sublets part of a contract.

(e) Before closing, a builder shall disclose to a person purchasing a new home all subcontractors used to construct the home.

(f) Except as provided in subsection (g), before closing, a builder shall provide proof that all subcontractors used in the construction of the home have been paid in full to the:

(1) person purchasing the new home; and

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- 1 (2) lender of the person described in subdivision (1).
2 (g) If a builder cannot prove that all subcontractors used in the
3 construction of the home have been paid in full, the lender of the
4 person purchasing the home may hold funds owed to any
5 subcontractor. The lender may pay the subcontractor with the
6 funds or must reimburse the builder if the builder provides proof
7 that the subcontractor has been paid.

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